

WALTER ROSALES, JANE DUMAS,	:	Order Dismissing Appeal as Moot
JOE COMACHO, KAREN TOGGERY,	:	
MARIE TOGGERY, LESLIE A. MESA,	:	
GERALD MESA, ROBERT M. MESA,	:	
WILLIAM MESA, and	:	
VIVIAN FLORES,	:	
Appellants	:	Docket No. IBIA 99-4-A
	:	
v.	:	
	:	
SACRAMENTO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 29, 1999

Appellants Walter Rosales, Jane Dumas, Joe Comacho, Karen Toggery, Marie Toggery, Leslie A. Mesa, Gerald Mesa, Robert M. Mesa, William Mesa, and Vivian Flores 1/ sought review of an August 21, 1998, decision of the Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), recognizing the results of a tribal election held for the Jamul Indian Village (Village) on June 21, 1997, with a run-off election for Chairman held on July 19, 1997. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal as moot.

The Board has discussed the background of disputes within the Village in some detail. See Rosales II; Rosales v. Sacramento Area Director, 32 IBIA 158 (1998) (Rosales I). It will not repeat that background here.

For purposes of this decision, the necessary background information is that the two factions within the Village--one then headed by Raymond Hunter and the other by Appellant Rosales--held separate elections in 1997. On October 6, 1997, the Superintendent, Southern California Agency, BIA (Superintendent), recognized the results of the election held by the Hunter faction. Appellants appealed to the Area Director who, on August 21, 1998, upheld the Superintendent's recognition of the results of that election.

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1/ Sarah Aldamas and Val Mesa were listed as additional appellants. These individuals have been removed as appellants in accordance with footnote 1 in Rosales v. Sacramento Area Director, 34 IBIA 50 (1999) (Rosales II).

Appellants appealed to the Board.

The Board received several letters while this appeal was pending which are relevant to the present order. It received a copy of a June 22, 1999, letter from the attorney representing Appellants in this appeal to the Superintendent and the Area Director. The letter indicated that an election had been held on June 19, 1999, by the Hunter faction, which Appellants now call the Hunter/Meza faction (for Kenneth Meza who was elected Chairman in the 1997 election which is the subject of this appeal). The letter stated at pages 1-2:

This will serve to inform you that my clients object to these acts by [the Hunter/Meza faction] and any acts by the B.I.A. in furtherance of the violation of the Tribal Court judgment or in breach of its fiduciary obligations under federal law toward my clients. If the B.I.A. or any agent of the U.S. persists in violating the Tribal Court judgment and assists in any way in recognizing the results of this staged election by the Hunter/Meza faction on June 19, 1999, my clients will have no alternative but to pursue their rights against such action for further violation of the Tribal Court judgment and federal law. [2/]

In a letter dated June 30, 1999, counsel for Appellants reported to the Superintendent and Area Director the results of an election which Appellants held on June 19, 1999.

By letter dated July 23, 1999, counsel for the Hunter/Meza faction, which counsel calls the Village, reported to the Board that the Village held an election on June 19, 1999, and that the Superintendent recognized the results of that election on June 25, 1999.

The Board contacted the Sacramento Area Office and asked whether an appeal had been filed from the Superintendent's June 25, 1999, decision. It was informed that the Area Office had not received an appeal.

The Board has consistently held that a valid tribal election held during the pendency of an appeal from an earlier tribal election renders the earlier appeal moot. In Hamilton v. Acting Sacramento Area Director, 29 IBIA 122, 123 (1996), the Board stated that the holding is

based on the fact that the determination of tribal leadership is quintessentially an intra-tribal matter raising issues of tribal sovereignty, and therefore the Department should defer to tribal resolution of the matter through an appropriate tribal forum, including the normal electoral process.

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2/ See Rosales II, 34 IBIA at 52-53 for a discussion of essentially identical language in another letter from counsel for Appellants.

Appellants were on notice of this holding as it was raised during briefing in Rosales I and was discussed in that decision. See 32 IBIA at 167-68. See also Villegas v. Sacramento Area Director, 24 IBIA 150 (1993), cited in Rosales I.

Hamilton further discussed the four ways in which an appellant may show that a subsequent tribal election should not be recognized as valid. These are:

(1) that the \* \* \* election has been determined invalid in a tribal forum; (2) that a challenge to the \* \* \* election is presently pending in a tribal forum; (3) that BIA has declined to recognize the results of the \* \* \* election; or (4) that BIA has recognized the results of the \* \* \* election, but an appeal from that recognition is presently pending.

29 IBIA at 123.

BIA has recognized the results of the 1999 election held by the Hunter/Meza faction and no appeal is pending from that recognition. There is furthermore no allegation that the 1999 election was challenged in a tribal forum. Therefore, the Board concludes that this appeal from the 1997 election has been rendered moot by a subsequent valid tribal election.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Sacramento Area Director's August 21, 1998, recognition of the results of a tribal election for the Jamul Indian Village is dismissed as moot.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge